

TAB



03-19-2002

U.S. Patent & TMOfo/TM Mail Rpt Dt. #26

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re trademark  
application : VITAFLEX Dr. Walter Mauch GmbH  
Application No. : 75/615,858  
Filed : January 5, 1999  
Mark : BY DOC MAUCH  
Class : 025  
Examiner : Amos T. Matthews  
Attorney's Docket : FELD-T008XX

Trademark Law Office: 108

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202-3513 on 3-14-99.

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By:

  
Charles L. Gagnebin III  
Registration No. 25,467  
Attorney for Applicant

\*\*\*\*\*

*New Exports Appeal*

PETITION TO ACCEPT DELAYED FILING AND  
DECLARATION OF CHARLES L. GAGNEBIN III

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-3513

Sir:

The below signing Charles L. Gagnebin III declares and states:

He is the responsible attorney for this appeal;

K

Application No. 75/615,858  
Filed: January 5, 1999

An Attorney's Reply to Examining Attorney's Appeal Brief was filed on January 14, 2002, docketed for January 13, 2002 (a Sunday), which was timely under the docket dates noted in a due date sheet (Exhibit A) attached to the Examining Attorney's Brief.

It was discovered on February 28, 2002 that there had been an error in docketing and that the actual due date was January 2, 2002.

Our docket clerk, Ms. Bernard, whose declaration is enclosed and who prepared the due date sheet (Exhibit A), has been retrained in that docketing procedure. She has always been very reliable but apparently misinterpreted the nature of the Examining Attorney's Brief. The firm guidelines for docketing have been revised to include reply briefs.

Enclosed is a copy of the previously filed Examining Attorney's Appeal Brief Reply (Exhibit B). It is requested that the delayed filing be considered unavoidable and that the Reply be included. A petition fee of \$100.00 is enclosed. The Commissioner is hereby authorized to charge Deposit Account No. 23-0804 for any additional filing fees associated with this communication or credit any overpayment.



03-19-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #26

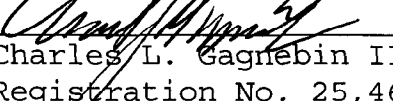
Application No. 75/615,858

Filed: January 5, 1999

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made herein are my own knowledge and are true; and all statements made on information and belief are believed to be true.

Respectfully submitted,  
VITAFLEX DR. WALTER MAUCH GMBH

By:   
Charles L. Gagnebin III  
Registration No. 25,467  
Attorney for Applicant

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CLG/dkh/268777  
enclosures



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TRADEMARK

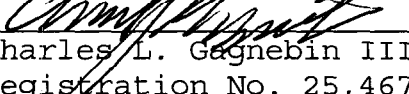
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By:   
Charles L. Gagnebin III  
Registration No. 25,467  
Attorney for Applicant

\*\*\*\*\*

DECLARATION OF BETTE J. BERNARD

I, Bette J. Bernard, hereby state as follows:

I am the docketing clerk for Weingarten, Schurgin, Gagnebin & Lebovici LLP and have been so engaged for the last decade without having allowed a misdocketing to occur. On December 17, 2001, we received the Examining Attorney's Appeal Brief in the above-identified case. I entered into our docketing system, which includes a due date sheet stapled to the PTO Communication (Exhibit A), a due date of January 13, 2002 (one month from the

mail date of the Examiner's communication) for filing a response. A response was filed on January 14, 2002 timely under my docket entry since January 13, 2002 fell on a Sunday. I, however, made a clerical mistake in identifying the notice of the Examining Attorney's Brief and chose the wrong category for docketing. I have been re-instructed on the proper docketing in such cases.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration issuing thereon.

Bette J. Bernard



Date: 3/14/02

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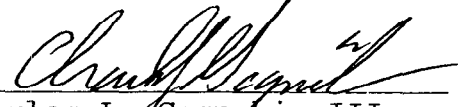
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re trademark application : Vitaflex Dr. Walter Mauch GmbH  
Serial No. : 75/615,858  
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Crystal Drive, Arlington, VA 22202-3513 on 1-14-02.

By:   
Charles L. Gagnebin III  
Registration No. 25,467  
Attorney for Applicant

\*\*\*\*\*  
REPLY TO EXAMINING ATTORNEY'S BRIEF ON APPEAL

TABLE OF CASES

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<u>Laub v. Industrial Development Laboratories, Inc.</u> , 121 USPQ 595 (TTAB 1959)	1
<u>New John Nissen Mannequins</u> , 227 USPQ 569 (TTAB 1985)	2
<u>D.B. Kaplan Delicatessen</u> , 225 USPQ 342 (TTAB 1985)	2

(TTAB 1959) there was also no writing, just a course of action giving rise to an allegation of consent to use. In re New John Nissen Mannequins, 227 USPQ 569 (TTAB 1985), the party Nissen at least signed incorporation papers, but nothing in the nature of a consent or conveyance of rights in a trademark.

The D.B. Kaplan Delicatessen, 225 USPQ 342 (TTAB 1985) case on the other hand is quite on point despite the arguments of the Examiner. The marital property agreement is a conveyance of the trademark rights including a number of registrations and applications. The language of transfer is to all rights which can only be seen as an exclusion for Dr. Mauch from the business bearing his name.

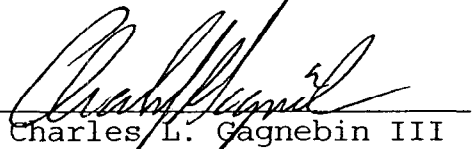
Regarding the request of the Examiner to exclude marketing and sales documents, to the extent that this may be new matter, the Board has broad discretion to allow such matter, which discretion is, to the extent necessary, requested given the complications of foreign based applications.



Reversal of the Examining Attorney and registration  
are requested.

Respectfully submitted,

VITAFLEX DR. WALTER MAUCH  
GMBH

By:   
Charles L. Gagnebin III  
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